

CHAPTER 3
BROKER-DEALERS AND INVESTMENT ADVISERS

**RULE 302 REGISTRATION, NOTICE FILING, AND RENEWAL
PROCEDURES**

302.02 INVESTMENT ADVISER.

(A) GENERAL PROVISIONS.

- (1) Each non-resident applicant must be registered, exempt, excepted from registration, or qualified to engage in business as an investment adviser or representative in the state of his primary residence, or in the case of applicants that are not natural persons, in the state in which such applicant has its principal place of business. Each person not required to register with the Commissioner but required to make a notice filing pursuant to Section 23-42-301(c)(1) of the Act must be registered as an investment adviser with the Securities and Exchange Commission.
- (2) Pursuant to Sections 23-42-208 and 23-42-302 of the Act, the Commissioner designates the web-based Investment Adviser Registration Depository (“IARD”) operated by the National Association of Securities Dealers Regulation, Inc. (“NASDR”) to receive and store filings and collect related fees from investment advisers and their representatives on behalf of the Commissioner.
- (3) Except upon approval of the Commissioner, a representative may not concurrently be registered for more than one investment adviser, or for an investment adviser and an issuer, unless each such investment adviser or issuer is an advisory affiliate or a control affiliate of the other. The provisions of this rule shall not prohibit a person from being concurrently registered with more than one investment adviser that is neither registered nor required to register pursuant to Section 23-42-301(c) of the Act.
- (4) Each filing for initial or renewal registration shall be complete only if it contains the information set forth in Sections 23-42-302 through 23-42-305 of the Act in the manner prescribed by the Commissioner. All information submitted in or accompanying an application must be complete and current as of the date of filing. If any of the information becomes inaccurate or incomplete for any reason prior to registration, amended information shall be filed as soon as practicable, but in any event, within 30 days from the date on which the applicant knew or should have known of the inaccuracy or change. Any application that becomes inaccurate or incomplete prior to registration will be deemed to be incomplete until such time as the inaccuracy or change is corrected.

(B) APPLICATION FOR INVESTMENT ADVISER REGISTRATION

(1) INITIAL APPLICATIONS. The application for initial registration as an investment adviser pursuant to Section 23-42-302(a) of the Act shall be made by completing Form ADV (Uniform Application for Investment Adviser Registration)(17 C.F.R. 279.1) in accordance with the form instructions and by filing Part I with the IARD, along with the fee as set forth in Section 23-42-304(a) of the Act, and by submitting directly to the Commissioner the following:

- (a) Part II of Form ADV;
- (b) Proof of compliance by the investment adviser with the examination requirements of Rule 302.02(G);
- (c) Such financial statements as set forth in Rule 302.02(H);
- (d) A corporate surety bond of \$50,000 covering the applicant and each representative if the applicant holds any customer's funds or has discretionary authority over any customer's account. However, no surety bond is required if an applicant maintains its principal place of business in a State other than Arkansas and is:
 - (1) Registered or licensed as an investment adviser in such State; and,
 - (2) Is in compliance with the applicable bonding requirements of such State.

In such event, the applicant shall furnish in lieu of a corporate surety bond, proof of such registration or license and a copy of the bond or other evidence exhibiting compliance with such other State's bonding requirement;

- (e) Copies of investment advisory contracts to be used by the investment adviser;
- (f) Copies of brochures to be used by the investment adviser as set forth in Rule 302.02(I), if different than Form ADV Part II;
- (g) An executed Consent to Service of Process in a form acceptable to the Commissioner;
- (h) Any other information the Commissioner may reasonably require.

- (2) **ANNUAL RENEWAL.** The application for annual renewal registration as an investment adviser shall be accomplished by filing a renewal application in a form acceptable to the Commissioner with the IARD, along with the fee as set forth in Section 23-42-304(a) of the Act, and by submitting directly to the Commissioner a list of all of its representatives currently registered that are renewing their registrations.
- (3) **UPDATES AND AMENDMENTS.**
 - (a) An investment adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to Part I of the investment adviser's Form ADV;
 - (b) An investment adviser must file with the Commissioner, in accordance with the instructions in the Form ADV, any amendments to Part II of the investment adviser's Form ADV;
 - (c) An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment;
 - (d) Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file with IARD an updated Form ADV, Part I;
 - (e) Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file with the Commissioner an updated Form ADV, Part II.
- (4) **COMPLETION OF FILING.** An application for initial or renewal registration is not considered filed for purposes of Section 23-42-302(a) of the Act until the required fee and Part I of Form ADV are received and accepted by the IARD and all other required submissions have been received by the Commissioner.

(C) APPLICATION FOR INVESTMENT ADVISER REPRESENTATIVE REGISTRATION

- (1) **INITIAL APPLICATIONS.** The application for initial registration as an investment adviser representative pursuant to Section 23-42-302(a) of the Act shall be made by completing Form U-4 (Uniform Application for Securities Industry Registration of Transfer) in accordance with the form instructions and by filing the Form U-4 directly with the Commissioner. The application for initial registration shall also include the following:

- (a) The fee required by Section 23-42-304 of the Act;
 - (b) Proof of compliance by the investment adviser representative with the examination requirements of Rule 302.02(G); and
 - (c) Any additional exhibits or information not specifically required by these rules but essential to a full presentation of all material facts relating to an applicant's qualifications or registration.
- (2) **ANNUAL RENEWAL.** The application for annual renewal of registration for a registered representative shall be filed directly with the Commissioner. The application for annual renewal of registration shall include the fee required by Section 23-42-304 of the Act.
- (3) **UPDATES AND AMENDMENTS.** The investment adviser and representative are under a continuing obligation to update information required by Form U-4 as changes occur. Any amendments to the representative's Form U-4 must be filed promptly with the Commissioner. An amendment will be considered promptly filed if received by the Commissioner within thirty (30) days of the event that requires the filing of the amendment.
- (4) **COMPLETION OF FILING.** An application for initial or renewal registration is not considered filed for purposes of Section 23-42-302(a) until the required fee and all required submissions have been received by the Commissioner

(D) NOTICE FILING REQUIREMENTS FOR SEC REGISTERED INVESTMENT ADVISERS

- (1) **NOTICE FILING.** The notice filing for an SEC registered investment adviser pursuant to Section 23-42-301(c) of the Act shall be filed with IARD on an executed Form ADV (Uniform Application for Investment Adviser Registration (17 C.F.R.279.1)). A notice filing of an SEC registered investment adviser shall be deemed filed when the fee required by Section 23-42-304 of the Act and the Form ADV are filed with and accepted by IARD on behalf of the Commissioner.
- (2) **PORTIONS OF FORM ADV NOT YET ACCEPTED BY IARD.** Until IARD provides for the filing of Part II of Form ADV, the Commissioner will deem filed Part II of Form ADV if an SEC registered investment adviser provides, within 5 days of a request, Part II of Form ADV to the Commissioner. Because the Commissioner deems Part II of the Form ADV to be filed, an SEC registered investment adviser is not required to submit Part II of Form ADV to the Commissioner unless requested.

- (3) ANNUAL RENEWAL. The annual renewal of the notice filing for an SEC registered investment adviser pursuant to Section 23-42-301(c) of the Act shall be filed with IARD. The renewal of the notice filing for an SEC registered investment adviser shall be deemed filed when the fee required by Section 23-42-304 of the Act is filed with and accepted by IARD on behalf of the Commissioner.
- (4) UPDATES AND AMENDMENTS. An SEC registered investment adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the SEC registered investment adviser's Form ADV.

(E) ACCEPTANCE OF REGISTRATION

- (1) Promptly upon the filing of an application for registration the Commissioner will either accept such application or notify the applicant of any information, documents, or other matters necessary to complete the application.
- (2) The date of effectiveness of registration shall be governed by Section 23-42-302(f) of the Act.
- (5) Notification of the effectiveness of registration or of any matters set forth in paragraph (E)(1) of this subsection shall be given to an applicant by IARD, CRD, first class mail, telephone, or by other electronic media, at the election of the Commissioner.

(F) EXPIRATION AND TERMINATION OF REGISTRATION AND NOTICE

FILING. Each registration and notice filing shall automatically expire on December 31, of each year without notification by the Commissioner, unless such registration or notice filing has been properly renewed, or has been previously withdrawn, terminated, or canceled.

- (1) When a registration or notice filing expires as a result of the failure to timely renew, a subsequent application or notice filing may be considered in all respects as an original application or notice filing unless an extension has been requested and granted in writing by the Commissioner prior to expiration.
- (2) A representative's registration terminates upon the termination of such representative's employment with the investment adviser with which he is registered. Such termination must be reported by the investment adviser on Form U-5. If a Form U-4 is received from the representative whose employment has terminated and is processed by the Commissioner prior to the receipt of the Form U-5 from the investment adviser with which the representative was employed,

such Form U-4 shall be considered not only an application for initial registration with another investment adviser, but also a notification by the representative of termination or withdrawal of his previous registration or application unless, pursuant to Rule 302.02(A)(3), the representative is dually registered.

- (3) Termination of an investment adviser's registration or notice filing for any reason shall automatically constitute termination of all of the registrations of the representatives registered with such investment adviser.

(G) EXAMINATION REQUIREMENTS

- (1) Examination Requirements. An individual applying to be registered as an investment adviser or investment adviser representative under the Act shall provide the Commissioner with proof of knowledge of the investment advisory business and the Arkansas Securities Act by obtaining a passing score on one of the following:
 - (a) The Uniform Investment Adviser Law Examination (Series 65 examination); or
 - (b) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).
- (2) Waivers. The examination requirements shall not apply to an individual who holds one of the following professional designations:
 - a. Certified Financial Planner (CFP) awarded by the International Board of Standards and Practices for Certified Financial Planners, Inc.;
 - b. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
 - c. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
 - d. Chartered Financial Analyst (CFA) awarded by the Association for Investment Management and Research;
 - e. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

f. Such other professional designation as the Commissioner may by rule or order accept.

- (3) Any individual who has been registered as an investment adviser or investment adviser representative in any jurisdiction in the United States or Canada within the two (2) years immediately preceding the filing of his application shall not be required to comply with the examination requirements of this Rule.

(H) FINANCIAL REQUIREMENT. Financial statements as required hereunder shall consist of a balance sheet, statement of operations (income or loss), statement of cash flows, statement of changes in retained earnings, statement of changes in equity or capital and the related notes to the financial statements. Unless otherwise provided herein, financial statements shall be audited in accordance with generally accepted auditing standards by an independent public accountant or an independent certified public accountant, and accompanied by an opinion acceptable to the Commissioner. For investment advisers that neither maintain customer funds or securities nor require prepayment of more than \$500 in fees per client and more than 6 or more months in advance, financial statements as required hereunder shall consist of at least an unaudited statement of financial condition in a form acceptable to the Commissioner dated within 30 days of such filing. Such statement shall be certified as true and accurate by the chief financial officer of the applicant as indicated on the Form ADV, or, if there is no chief financial officer, the person executing Form ADV.

- (1) **INITIAL REGISTRATION.** Each investment adviser applying for initial registration must submit an unaudited statement of financial condition in a form acceptable to the Commissioner dated within 30 days of such filing. Such statement shall be certified as true and accurate by the chief financial officer of the applicant as indicated on the Form ADV, or, if there is no chief financial officer, the person executing Form ADV. If the applicant has been engaged in business for one year or more preceding the filing of the application, the applicant may submit audited financial statements for the last fiscal period along with an unaudited balance sheet in a form acceptable to the Commissioner dated within 30 days of such filing.
- (2) **ANNUAL REPORTS.** Every currently registered investment adviser must file with the Commissioner annual financial statements as specified above not later than ninety (90) days after the close of the fiscal year unless written permission to file at some other date is granted by the Commissioner in advance of the date for filing the report.
- (3) **PUBLIC RECORD.** All financial statements required by the Act to be filed with the Commissioner as a part of a registration, notice filing, or renewal of either shall be public; except that if the balance sheet is in a format in which it is bound

separately, the balance of the audited financial statements will be considered non-public if properly identified in such a manner that will indicate these documents are confidential.

- (4) For an investment adviser applicant or registrant that maintains a principal place of business in a State other than Arkansas, the requirements of paragraphs (H)(1) and (2) above may be satisfied by filing with the Commissioner a copy of any financial reports required by and filed with the securities commissioner in such State, provided that the investment adviser is registered or licensed as an investment adviser in such State and is in compliance with such State's financial reporting requirements. Notwithstanding the above, an applicant or registrant shall furnish such further information as requested by the Commissioner when the Commissioner deems it necessary in order to present a full and accurate presentation of the financial circumstances of such applicant or registrant.

(I) **BROCHURE REQUIREMENT.** Unless otherwise provided in this rule, an investment adviser registered or required to be registered pursuant to Section 23-42-301 of the Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement which may be a copy of Part II of its Form ADV or written documents containing that information required by Part II of Form ADV, or such other information as the Commissioner may require.

(1) DELIVERY.

- (a) An investment adviser, except as provided in subdivision (b), shall deliver the statement required by this section to an advisory client or prospective advisory client either:
 - (i) At a time not less than 48 hours prior to entering into any investment advisory contract with such prospective client, or
 - (ii) At the time of entering into any such contract so long as the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.
- (b) Delivery of the statement required by paragraph (a) need not be made in connection with entering into a contract for impersonal advisory services.

(2) OFFER TO DELIVER.

- (a) An investment adviser, except as provided in subdivision (b), shall annually and without charge deliver or offer in writing to deliver upon

written request the statement required by this section to its advisory clients.

- (b) The delivery or offer required by subdivision (a), need not be made to advisory clients receiving advisory services solely pursuant to a contract for impersonal advisory services of less than \$200.00
 - (c) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a fee of \$200.00 or more, an offer of the type specified in subdivision (a), shall also be made at the time of entering into an advisory contract.
- (3) RECEIPT OF REQUEST. Any statement requested in writing by an advisory client or prospective advisory client required by this subsection must be mailed or delivered within seven (7) days of the receipt of the request.
- (4) OMISSION OF INAPPLICABLE INFORMATION. If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is not applicable to the type of investment advisory service or fee which is rendered or charged, or proposed to be rendered or charged, to that client or prospective client.
- (5) OTHER DISCLOSURES. Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.